

Application Serial Number 10/507,538
Response to Office Action
Dated December 26, 2007

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REMARKS / DISCUSSION OF ISSUES

Claims 1-17 are presented for examination. Claims 9-17 are new. New claims add no new matter.

Unless indicated otherwise, claims are amended for non-statutory reasons, to replace European-style claim phraseology with American-style claim language. The claims are not narrowed in scope and no new matter is added.

New claims are added to at least partially restore the original range of claims that existed before multiple dependencies were removed in the preliminary amendment. No new matter is added.

Objection to the Specification

The objections to the specification have been considered and each has been addressed. The objections to the specification are thus moot in view of the present response.

Objections to the Claims

The objections to the claims have been considered and each has been addressed. The objections to the claims are thus moot in view of the present response.

Rejections under 35 U.S.C. § 112, ¶ 2

The rejections under this section of the Code have been considered and each has been addressed. Therefore, the present rejections are believed moot in view of the present response.

Rejections under 35 U.S.C. § 102

1. Claims 1 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Steeves, et al.* (U.S. Patent 6,034,603).
2. Claims 1-8 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Strong, et al.* (U.S. Patent Publication 2003/0007473).

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For at least the reasons set forth herein, Applicants respectfully submit that all pending claims are patentable over the applied art.

At the outset Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. See, e.g., *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. See, e.g., *Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. See, e.g., *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

I. Rejection of claims 1 and 5

Claim 1 is drawn to a communication station and features, inter alia:

"...communication can be effected between the communication station and at least one further communication station while observing the station/station protocol."

Claim 5 is drawn to an integrated circuit and includes a similar feature.

The Office Action attempts to equate the readers 101-103 of *Steeves, et al.* with the featured communication station and alleges that these readers communicate with one another. The Office Action further attempts to equate the tags 151-155 with the featured transponders and that the readers 101-103 of *Steeves, et al.* communicate with the tags. The Office Action directs Applicants to column 2, lines 57-60; column 5, lines 49-51 and column 8, lines 1-2 and 30-40 of the applied art in support of this position.

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A review of the noted portions of *Steeves, et al.* reveals that the readers 101-103 communicate with a computer 110 via a media independent control network. While the reference discloses that each reader 101-103 operates both individually and in concert with other readers 101-103 and computer 110, assuming arguendo that the readers 101-103 are communication stations, there is no disclosure in the reference to *Steeves, et al.* of a reader communicating with a further reader. Accordingly, and for at least the reasons provided above, Applicants respectfully submit that the applied reference to *Steeves, et al.* fails to disclose that *communication can be effected between the communication station and at least one further communication station* as featured in claims 1 and 5. Accordingly, the reference fails to disclose at least one feature of claims 1 and 5. Therefore, a *prima facie* case of anticipation cannot be made based upon this reference.

II. New Claims 9 and 14 are patentable over Steeves, et al.

New claims 9 and 14 each include a feature similar to the noted feature of claim 1. Accordingly, and for at least the reasons set forth above, Applicants respectfully submit that claims 9 and 14 are patentable over the applied art. Moreover, claims 10-13 and 15-17, which depend from claims 9 and 14, respectively, are patentable for at least the same reasons.

III. Rejection of claims 1-8

Claim 1 also features:

"...station-station protocol that differs from the station-transponder protocol by at least one protocol parameter..."

Claim 1 includes a similar feature.

The Office Action equates the interrogators 6 of *Strong, et al.* with the communication stations of claim 1; and the tags 2 with the transponders of claim 1. Assuming arguendo that these assumptions are correct, Applicants respectfully submit that the reference to *Strong, et al.* fails to disclose differing protocols for the interrogators and the tags.

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The Office Action directs Applicants' attention to paragraphs [0047], [0054]-[0055] and [0096] in support of its position. However, there is no disclosure of differing protocols between the interrogator-interrogator communication and the interrogator-tag protocol. As described paragraph [0035], the teachings of *Strong, et al.* are directed to the co-existence of a wireless tag identification system such as a local positioning system (LPS) with an IEEE 802.11 WLAN system with minimal interference. One technique for implementing the co-existent systems is described in paragraphs [0046], [0054] – [0055]. However, the reference fails to disclose any communications protocols with specificity, and thus cannot disclose any difference between the interrogator-tag and interrogator-interrogator protocol.

The Office Action alleges that the 2.4 GHz system of operation necessitates that the interrogator-tag protocol be different than the interrogator-interrogator protocol. There is no basis for this assertion. In fact, in paragraph [0056] the reference discloses the function of the LPS at 2.4 GHz. Clearly, this lends support to the position that the interrogator communication is under the same protocol when communicating with other interrogators and with tags in the system, which as the Office Action points out, may function at this frequency. While it is true that the reference discloses that the interrogators may be plug-in Ethernet LAN devices, there is no disclosure that the interrogator-tag is otherwise.

Finally, there is no basis provided in the Office Action for the assertions by the Examiner that the protocols of *Strong, et al.* must be of one type or another or that the protocols must be different. If the Examiner is relying on yet-undisclosed extrinsic evidence in support of this position, Applicants respectfully request the formal citing of this evidence. If the basis of this position is from the personal knowledge of the Examiner, an affidavit under 37 C.F.R. 1.104(d) (2) is respectfully requested. If neither the extrinsic evidence nor the affidavit is forthcoming, Applicants respectfully request withdrawal of these rejections.

In summary, the Office Action alleges that the reference to *Strong, et al.* discloses that the *station-station protocol* differs from the *station-transponder protocol* as claimed.

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However, the reference fails to describe a single protocol for LPS communications, let alone different protocols as claimed.

Accordingly, and for at least the reasons set forth above, Applicants respectfully submit that the applied reference to *Strong, et al.* fails to disclose at least one feature of claims 1 and 5. Therefore, a *prima facie* case of anticipation cannot be made based upon this reference, and these claims are patentable over the applied art. Moreover, Applicants respectfully submit that claims 2-4 and 6-8, which depend from claims 1 and 5, respectively, are patentable for at least the same reasons.

IV. New Claims 9 and 14 are patentable over Steeves, et al.

New claims 9 and 14 each include a feature similar to the noted feature of claim 1. Accordingly, and for at least the reasons set forth above, Applicants respectfully submit that claims 9 and 14 are patentable over the applied art. Moreover, claims 10-13 and 15-17, which depend from claims 9 and 14, respectively, are patentable for at least the same reasons.

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Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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Respectfully submitted on behalf of:

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Date: March 30, 2007

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